IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5735 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PREMJI HARIBHAI MISTRI

Versus

STATE OF GUJARAT

Appearance:
MS VANDANA L BHATT for Petitioner
MR LR PUJARI, AGP for Respondents

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 07/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The appellant challenges the judgement and order dated 16th July 1999 of the learned Civil Judge [S.D.] Surendranagar dismissing the appellant's suit in which the appellant had prayed for damages to the tune of Rs.6,24,096=00 on the ground that the respondents authorities had not granted a license for running a saw-mill to the appellant as a result of which the appellant had suffered a financial loss.

2. According to the appellant, he had taken a loan of Rs.32,000=00 from the Gujarat Financial Corporation and Rs.30,000=00 from the State Bank of Saurashtra with a view to start a saw-mill. He had also taken electric connection from the Gujarat Electricity Board for 11 H.P. capacity. According to the appellant, he made an application on 2nd July 1984 to the competent authority for a license for running a saw-mill. He was asked to furnish the application in a prescribed form by the Department and therefore, he submitted his application in a prescribed form on 7th June 1986, which according to the appellant, was forwarded to the concerned authority. The appellant was doing business of cutting wood through labourers as stated in the plaint. He came to be penalised on 14/5/1990 for his illicit activities. According to the appellant, Gambhirsinh Shivubha was and Mahavir Timber Mart were issued licences though penalties were imposed on them. Since the license was not issued, the appellant was compelled to close his business and could not pay his dues to the financial corporation and the bank and had to pay the minimum charges payable to the Gujarat Electricity Board. He had sent applications on 2-7-1984, 19-3-1985 and 7-6-1985 for the license, but no response was given to the appellant. The suit was therefore filed for recovery of damages due to loss of business from the respondents.

3. In the written statement exh. 7, the respondents contested the suit on various grounds contending that the claim of the appellant was misconceived.

4. The evidence on record discloses that the appellant was running a saw-mill since 1980-81 at Muli without obtaining any licence from the concerned authority. In fact, he had admitted that he had raised loans and obtained electric connection for running the saw-mill though he had no licence. The appellant made an application on 2-7-1984 exh. 17 for getting a licence and he was intimated to make the application in a prescribed form. He therefore applied again on 7-6-1985 as per exh. 32. Certain queries were raised by the

Department which are reflected in exh. 44 and the appellant was asked to comply with them. The trial Court found from the documents at exh. 57 and exh. 58 that the concerned forest authority of Junagadh had rejected the application of the appellant under intimation to the Deputy Conservator of Forest, at Surendranagar and on receipt of that intimation, the concerned officer of Surendranagar in turn intimated to the appellant that licence cannot be issued to the appellant, in the interest of preservation of forest. Copy of the disputed register was produced to show that the intimation was sent by ordinary post to the appellant. The trial Court was satisfied on seeing the copy of the register at exh. 59 that such communication was indeed sent to the appellant. Therefore, the plea of the appellant that he was not intimated about the outcome of his application, was negatived. The appellant was also orally intimated by the concerned officer of the Department that offences were registered against him under the Forest Act and therefore, no licence could be issued to him. Even in response to the application made by the appellant's son on 22-9-1990, the authorities had intimated to his son to furnish certain required documents and information, which requisition was not complied with. Admittedly, the appellant had carried on his business without a licence and he was penalised by the authority on 9-5-1990.

5. We are satisfied from the evidence on record that the trial Court was right in concluding that the application of the appellant for getting a licence was finalised on 10th April 1985 under intimation to him as per exh. 58. However, the appellant thereafter tried to get a licence in the name of his son, which attempt also did not fructify. Though no licence was obtained, the appellant continued to indulge in his illegal activities contrary to the provisions of the Forest Act and the Rules made thereunder. It has been satisfactorily established from the record that he was intimated that, in the interest of forest conservation, licence could not be given to him. It has been established by satisfactory evidence on record as noted by the trial Court in paragraphs 7 and 8 of its judgement, that the appellant was penalised several times for committing offences under the Forest Act. The trial Court therefore rightly concluded that there was justification for the authority not to issue any licence to the appellant. The contention raised on behalf of the appellant before us that the action of the respondents in not issuing licence was arbitrary, has therefore no substance.

6. Under section 41(2) of the Indian Forest Act,

1927, the State Government is authorised to make rules, inter alia, to prohibit absolutely or regulate by grant of licences (this phrase was substituted for "subject to conditions" by the Indian Forest (Gujarat Amendment) Act, 1963) within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or marking of timber. Under the Bombay Forest Rules, 1942, it was provided by Rule 8 that no person shall operate any machinery or saw-mill for cutting or converting timber without obtaining a licence in that behalf. Thus, admittedly the requirement of obtaining a licence was statutorily prescribed and on the appellant's own admission contained in the plaint, he had started the business of cutting trees without obtaining any such licence. He was admittedly penalised for such forest offences. It is clearly established that the concerned authority had refused to issue licence to the appellant in the interest of forest conservation.

7. We are satisfied from the evidence on record that the refusal of issuing licence to the appellant was fully justified having regard to the fact that he was openly indulging in the activities which were violative of the provisions of the Forest Act and the Rules made thereunder and in the present case, it can never be said that the refusal to issue a licence was an arbitrary act on the part of the respondent authorities. We are fully satisfied that he was refused licence for valid reasons and was not a fit person to get such licence in view of his openly indulging in the business of running a saw-mill in violation of the provisions of the said Act and the Rules made thereunder.

8. We may also take note of the fact that the appellant feigned of not having received the order rejecting his application for a licence and straightaway filed a suit for damages. The authority was empowered to issue a licence as also to refuse it. The appellant could not have started any such business without a valid licence as per the provisions of the Rules. However, by his raising loans and illegally starting a business, continuation of which was a forest offence, no right accrued to him to claim any damages. In fact, a claim for damages in such a case would be wholly misconceived because the statutory authority had a power to refuse a licence as per the statutory provisions relating to the grant of licence. The order which was made against the appellant was never challenged by the appellant - not even in the present suit. Since the order of rejection of his application for a licence became final, there was no question of any right accruing in favour of the

appellant to claim any damages. Even otherwise, the claim for damages in a matter of this type cannot be sustained.

We therefore find ourselves in full agreement with the reasoning adopted by the trial court for reaching its conclusions. The appeal is summarily dismissed.

MARCH 07, 2001 [R.K.ABICHANDANI, J.]

[A.M.KAPADIA, J.]

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